

FOR PUBLICATION

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

APPELLATE DIVISION OF SAINT CROIX

VABEFIMA CORPORATION,	:	
Appellant,	:	D.C. No. 1993-0002
v.	:	T.C. No. 178-1992
GLORIA CINTRON,	:	
Appellee.	:	
_____	:	

On Appeal from the Territorial Court of the Virgin Islands

Argued: November 17, 1993

Filed: February 25, 1994

**BEFORE:**    **THOMAS K. MOORE**, Chief Judge, District Court of the Virgin Island; **JAMES T. GILES**, Judge, United States District Court for the Eastern District of Pennsylvania, Sitting by Designation; and **IVE A. SWAN**, Judge, Territorial Court of the Virgin Islands, St. Thomas and St. John Division, Sitting by Designation.

**APPEARANCES:**

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**OPINION OF THE COURT**

The issue on appeal is whether the Territorial Court erred in dismissing Vabefima Corporation's complaint for its alleged failure to comply with the filing and reporting requirements of V.I. CODE ANN. tit. 13, §§ 531, 533, and 371.

**I. Factual Background and Prior Proceedings**

On February 10, 1992 appellant Vabefima Corporation ("Vabefima") initiated this action in the Territorial Court against appellee Gloria Cintron ("Cintron"). On November 11, 1992 Cintron moved to dismiss the complaint for failure to comply with reporting requirements and payment of franchise taxes. (Cintron's App. at 23.)<sup>1</sup> That court heard argument on November 20, 1992 and granted the motion. Vabefima appeals from the order of dismissal.

**II. Jurisdiction and Standard of Review**

The district court has appellate jurisdiction over a final order of the Territorial Court pursuant to V.I. CODE ANN. tit. 4, § 33 (1967 and 1992 Supp.). On review, the court must apply the same procedure and standards as the Third Circuit Court

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1. The parties submitted separate appendices rather than a single, joint appendix, contrary to the requirements of the local appellate rules. See LRAp30.

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of Appeals when reviewing decisions of a district court. See V.I. CODE ANN. tit. 5, App. IV R. 176 (1982). The Territorial Court's findings of fact are reviewed under a clearly erroneous standard, while questions of law receive plenary review. *Sheet Metal Workers Int'l Ass'n Local 19 v. 2300 Group, Inc.*, 949 F.2d 1274, 1278 (3d Cir. 1991); *Smith v. Dep't of Educ.*, 25 V.I. 426, 431 (D.C. 1990). We must also review for plain error whether or not those errors were raised in the court below. Plain errors are those that "undermine the fundamental fairness of the trial and contribute to a miscarriage of justice." *Osei-Afriyie v. Medical College of Pa.*, 937 F.2d 876, 881 (3d Cir. 1991) (quoting *United States v. Young*, 470 U.S. 1, 16 (1985)).

**III. Discussion**

Vabefima argues that the trial court erred by dismissing this action under V.I. CODE ANN. tit. 13, § 533(a) since in opposition to the motion, it did produce a Certificate of Good Standing. It contends that the Certificate demonstrated that all franchise taxes due to be paid had been paid and that, in fact, all such franchise taxes had been paid. Thus, it contends, the Territorial Court erred when it dismissed this action for failing to file certain annual reports when Vabefima

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was not in arrears as to any franchise taxes due and owing at the time suit was commenced.

Title 13 of the Virgin Islands Code addresses the law of corporations and associations. Section 531(a) requires every corporation incorporated under Virgin Islands law or qualified to do business in the Virgin Islands to pay a franchise tax in order to conduct business here. V.I. CODE ANN. tit. 13, § 531(a) (1993 Supp.).<sup>2</sup> Section 371(b) also requires corporations to file annual reports and franchise tax reports in order to conduct business. *Id.* § 371(b) (1993 Supp.). Under section 531(b), a corporation must pay a franchise tax "together with the filing of the annual report and annual franchise tax report on a form prescribed by the Lieutenant Governor, on or before June 30 of each calendar year." *Id.* § 531(b) (1993 Supp.).

The Code also provides penalties for late payment and non-payment of the annual franchise tax. *Id.* §§ 532, 533 (1982 &

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2. That Code section reads as follows:

Every corporation incorporated under the laws of the Virgin Islands and every foreign corporation qualified to do business in the Virgin Islands shall pay to the Lieutenant Governor for the use of the Government of the Virgin Islands, a franchise tax of \$1.50 for each thousand dollars of capital stock used in conducting business in the Virgin Islands.

. . .

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1993 Supp.). Section 533(a), entitled "Failure to pay tax; penalty," provides as follows:

(a) No corporation may commence or maintain any action in any court if it has not paid its annual franchise tax last due. A certificate of the payment of such annual franchise tax, or any duplicate of such certificate under the seal of the Lieutenant Governor, shall be prima facie evidence of such payment. The Lieutenant Governor shall issue such certificate upon request.

*Id.* § 533(a) (1982) (emphasis added). Cintron argues that this section implicitly incorporates the reporting requirements of section 371(b), and the payment and filing obligations imposed by section 531(b). Although sections 371(b) and 531(b) were amended by the Virgin Islands Legislature in 1988, the pre-existing language of section 533(a) remained unchanged. Cintron argues that this court should find that section 533(a) was amended by implication.<sup>3</sup> This court disagrees. The Legislature's intention to amend a statutory provision by implication must be clear and manifest. *In re Guardianship of Kai Moolenaar*, No. 93-7360, 1994 U.S. App. LEXIS 1315, at \*10-11 (3d Cir. Jan. 27, 1994).

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3. In her brief, Cintron states that "[i]n amending both statutes [ §§ 371(b) and 531(b) ], the legislature clearly intended to combine the requirements of the franchise tax payments with the filing of the franchise tax returns and annual reports." (Cintron's Br. at 11.) Because section 533(a) has not been amended, Cintron's argument amounts to a claim of amendment by implication.

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We are unable to locate, nor does Cintron point to, any clear or manifest indication that section 533(a) was intended to be amended along with sections 371(b) and 531(b). Although section 531(b) requires the filing of an annual report and franchise tax report at the same time the franchise tax payment is due, section 533(a) only requires payment of the franchise tax as a condition precedent to a right to sue and maintain an action in this jurisdiction. Nothing in the plain language or the legislative history of the Code suggests that access to the courts is also conditioned on filing annual reports or franchise tax returns.

In *Standex Co. v. John*, 27 V.I. 157 (Terr. Ct. 1992), the Territorial Court considered the related question of whether a foreign corporation is entitled to access to the courts of this jurisdiction even though it is not "qualified" to do business in the Virgin Islands. A New York corporation which was doing business in the Virgin Islands but was not registered to do business in the territory and had not paid a franchise tax, brought a debt collection action. Defendants moved to dismiss asserting that the plaintiff was barred from prosecuting its claim under V.I. CODE ANN. tit. 13, § 533(a). The court held that "the Virgin Islands statute does not specifically deny access to

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the courts to a non-qualifying foreign corporation." 27 V.I. at 161. In so holding, the court relied on a narrow reading of section 533(a) because of the constitutional implications engendered by denying access to the courts.<sup>4</sup> *Id.*

In this case, Vabefima produced a Certificate of Good Standing dated February 7, 1992 as proof of its capacity to maintain an action under section 533(a). Although Cintron produced a conflicting affidavit on the issue of Vabefima's standing, that affidavit addresses appellant's non-compliance with reporting requirements, and is silent on the matter of franchise tax payments. As in *Standex Co.*, this court is loathe to restrict access to our courts where section 533(a) facially conditions such access on the payment of franchise taxes only.

**IV. Conclusion**

This court finds that the trial court plainly erred when it construed section 533(a) to require filing an annual report and franchise tax return as conditions precedent to maintaining an action. Accordingly, the judgment of the

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4. As explained in *Standex*, a statute denying a corporation access to the courts works a potential deprivation of property in violation of due process rights. Such statutes are read narrowly so as to be in conformity with the Constitution. See also *Cirino v. Hess*, 384 F. Supp. 621, 624-25 (D.V.I. 1973).

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Territorial Court is vacated. An appropriate order will be entered.

FOR THE COURT:

/S/ Thomas K. Moore

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THOMAS K. MOORE, CHIEF JUDGE  
District Court of the Virgin Islands  
Appellate Division of Saint Croix

DATED: February 25, 1994

A T T E S T:

Orinn Arnold  
Clerk of the Court

BY:

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Deputy Clerk

Copies to:

Eddy Rivera, Esq.  
Ellen G. Donovan, Esq.  
Territorial Court Judge \_\_\_\_\_